

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
SOLICITING POST-WORKSHOP COMMENTS ON
PROCUREMENT INCENTIVE FRAMEWORK**

In my ruling dated November 23, 2004, I notified respondents and all interested parties in this proceeding and in Rulemaking (R.) 04-01-025 that workshops on a procurement incentive framework would be held in San Francisco on March 7-9, 2005.¹ I also set forth a schedule for pre-workshop and post-workshop comments. Today's ruling directs interested parties to the workshop report posted on the Commission's website² and modifies the schedule for post-workshop comments. This ruling also provides further direction on the issues to be addressed in comments, based on the workshop discussion.

¹ Since the issuance of my ruling, the Commission has also named individual Energy Service Providers (ESPs) and Community Choice Aggregators (CCAs) respondents in this proceeding. (See Decision (D.) 05-03-013 issued on March 17, 2005.) Accordingly, I am also serving this ruling to each ESP listed in Appendix A of D.05-03-013 and parties to R.03-10-003 and directing that all post-workshop comments/briefs be filed on these entities as well.

² The report can be accessed at: www.cpuc.ca.gov/static/industry/electric/index.htm.

As I stated in my November 23 ruling, the purpose of the workshop report and pre- and post-workshop comments will be to develop the record so that the Commission can “provide further direction on the type of incentive framework it envisions for procurement, and what implementation issues will need to be addressed later in this proceeding.”³ Having attended all three days of the workshop, I am now very confident that this process will produce constructive proposals and thoughtful consideration of the key issues that will inform the Commission’s decision. I want to commend our Commission staff and workshop facilitator for focusing the workshop discussion on the key issues and creating an environment conducive to meaningful and creative dialogue. I also thank the workshop participants for being willing to debate threshold policy and implementation issues with one another in such an open and respectful manner.

The workshop report summarizing the three days of discussion is a collaborative product, created from the written notes and recollections of myself, Dan Adler (Division of Strategic Planning), Paul Douglas (Energy Division) and David Olsen, our workshop facilitator. It is designed to describe to the reader the structure of the workshop discussion and capture the key issues raised by workshop participants during the various workshop sessions. In post-workshop comments, workshop participants should point out any comments that were inaccurately attributed to them, or identify any key discussion points that we may have overlooked.

However, the focus of post-workshop comments should be on addressing the questions contained in the workshop report under Section VI “Workshop

³ November 23, 2005 Ruling, p. 6.

Conclusion and Issues for Further Comment.” Comment on other pertinent issues is also invited. Most of the discussion at workshops focused on key policy and implementation issues associated with an incentive framework that includes a greenhouse gas (GHG) cap, including the staff workshop proposal described in the report. I encourage respondents and interested parties to continue the constructive and collaborative dialog initiated during the workshop on these issues in developing their comments.

There was also discussion at the workshop of category-specific financial incentives, as a component of an overall procurement incentive mechanism, but time did not permit detailed consideration of how each of the specific mechanisms might interact with each other or with a GHG cap. Therefore, we have included specific questions concerning such interactions in the “Issues For Further Comment” section of the report for further comment.

In addition, as discussed in the report, the pre-workshop comments and workshop discussion did not yield concrete proposals for either “portfolio-wide” procurement financial incentives or “category-specific” incentives targeted to long-term supply-side resource acquisition. The workshop report briefly discusses some of the reasons why these types of incentive frameworks were not further developed, but I look to the written comments to elaborate on whether they should be explored by the Commission. If parties have specific proposals for these types of financial incentives, then this is the opportunity to present them.

During the second day of the workshop, there was some discussion concerning the Commission’s prior experience with risk/reward incentive mechanisms, particularly for procurement categories other than energy efficiency. Over the last 25 years, the Commission has adopted (and in some

cases subsequently suspended) a wide range of such incentive mechanisms, starting with the annual energy rate (AER) incentive for electric utilities to lower their fuel and power purchases and in the 1980s, followed by unit-specific incentive mechanisms (e.g., “target capacity factors”), generation and dispatch performance based ratemaking mechanisms (“PBRs”), as well as base rate and gas procurement PBRs in various proceedings through the mid-1990s. I believe that the Commission may need to review this experience in considering some of the incentive framework proposals presented in this proceeding.

Accordingly, at the workshop, I requested that Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company (collectively, “the utilities”) each submit to me by April 15, 2005 a written history of the (non energy-efficiency) risk/reward incentive mechanisms adopted for their operations. These submittals should include a summary of any evaluations that have been performed on those mechanisms, along with source materials.

As I indicated at the workshop, after receiving further input from those with “institutional memory” concerning these mechanisms at the Commission and other organizations, as appropriate, I plan to issue the summary for comment by all interested parties. That ruling will be forthcoming sometime in May. By today’s ruling, I reiterate my direction to the utilities to provide their written submittals to me by April 15, 2005, in hard copy and electronically.

In addition, the workshop discussion raised legal issues that the Commission may need to address, depending upon the resolution of specific threshold and implementation issues. Respondents should address pertinent legal issues in their comments, in the form of separate legal briefs. Other

interested parties are also invited to brief the Commission on legal issues related to an incentive framework that includes a greenhouse gas limitation component.⁴

Finally, I invite the California Climate Action Registry, the California Energy Commission, the California Environmental Protection Agency and the California Air Resources Board to submit post-workshop comments on the report, since these organizations are central to California's efforts to address climate change in a coordinated fashion. Dan Adler will coordinate this effort to ensure that all comments are shared in a timely fashion among the parties, the Registry and our sister agencies.

IT IS RULED that:

1. As discussed in this ruling, the utilities shall each submit to me a written history of the (non energy-efficiency) risk/reward incentive mechanisms adopted for their operations by April 15, 2005. These submittals shall include a summary of any evaluations that have been performed on those mechanisms, along with source materials.

2. Opening comments on the Workshop Report on Procurement Incentive Framework are due by April 25, 2005. Reply comments are due by May 16, 2005. This report is posted on the Commission's website at www.cpuc.ca.gov/static/industry/electric/index.htm.

3. All workshop comments shall be filed at the Commission's Docket Office and served on the service list in this proceeding, R.04-01-025, R.03-10-003, and on the energy service providers listed in Appendix A to this ruling. In addition, I

⁴ Respondents and interested parties should now be aware of D.05-03-013 that the Commission issued subsequent to the workshop, and should address the legal issues raised in the workshop report in light of that decision.

request that workshop comments also be sent electronically to our workshop facilitator, David Olsen, at olsen@avenuecable.com.

4. Workshop comments shall be served using the Electronic Service Protocols established in this proceeding and consistent with the electronic service provisions of Rule 2.3 and 2.3.1. The Commission's Rules of Practice and Procedure are posted at www.cpuc.ca.gov/static/announcements/050323_electronic_service.htm. A copy of the Electronic Service Protocols established in this proceeding are appended to this Ruling (Appendix B).

5. Parties are also required to serve paper copies on the energy service providers listed in Appendix A and on any of the appearances in R.04-01-025 and R.03-10-003 that have not provided electronic addresses to the Commission. In addition, I request that parties mail a paper copy of their workshop comments to me at P. O. Box 210, Volcano, California, 95689.

Dated April 4, 2005, at San Francisco, California.

/s/ MEG GOTTSTEIN

Meg Gottstein
Administrative Law Judge

APPENDIX A

ENERGY AMERICA, LLC (1341) 263 TRESSER BLVD., ONE STAMFORD PLAZA 8 TH FLOOR STAMFORD, CT 06901	CORAL POWER L.L.C. (1360) 4445 EASTGATE MALL, SUITE 100 SAN DIEGO, CA 92121
BP ENERGY COMPANY (1366) 501 WESTLAKE PARK BLVD. HOUSTON, TX 77079	PILOT POWER GROUP, INC. (1365) 9320 CHESAPEAKE DRIVE, SUITE 112 SAN DIEGO, CA 92123
APS ENERGY SERVICES COMPANY, INC. (1361) 400 E. VAN BUREN STREET, SUITE 750 PHOENIX, AZ 85004	COMMONWEALTH ENERGY CORPORATION (1092) ELECTRICAMERICA 600 ANTON BOULEVARD, SUITE 2000 COSTA MESA, CA 92626
NEW WEST ENERGY CORPORATION (1063) NEW WEST ENERGY PO BOX 61868, MAILING STATION ISB 665 PHOENIX, AZ 85082-1868	AOL UTILITY CORP. (1355) 12752 BARRETT LANE SANTA ANA, CA 92705
CONSTELLATION NEW ENERGY, INC. (1359) 350 SOUTH GRAND AVENUE, SUITE 2950 LOS ANGELES, CA 90071	CITY OF CORONA DEPARTMENT OF (1367) WATER AND POWER 730 CORPORATION YARD WAY CORONA, CA 92880
MICHAEL MAZUR (1350) 3 PHASES ELECTRICAL CONSULTING 2100 SEPULVEDA BLVD., SUITE 15 MANHATTAN BEACH, CA 90266	CALPINE POWERAMERICA-CA, LLC (1392) 4160 DUBLIN BLVD. DUBLIN, CA 94568
QUIET LLC (1368) QUIET ENERGY 3311 VAN ALLEN PL. TOPANGA, CA 90290	MODESTO IRRIGATION DISTRICT (1151) MODESTO IRRIGATION DIST. MID. WATER 1231 ELEVENTH STREET P.O. BOX 4060-95352 MODESTO, CA 95354
AMERICAN UTILITY NETWORK (A.U.N.) (1158) 10705 DEER CANYON DRIVE ALTA LOMA, CA 91737	
STRATEGIC ENERGY, L.L.C. (1351) 7220 AVENIDA ENCINAS, SUITE 120 CARLSBAD, CA 92009	
SEMPRA ENERGY SOLUTIONS (1364) 101 ASH STREET, HQ09 SAN DIEGO, CA 92101-3017	

(END OF APPENDIX A)

APPENDIX B

ELECTRONIC SERVICE PROTOCOLS

Party Status in Commission Proceedings

These electronic service protocols are applicable to all “appearances.” In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains “party” status. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Service of Documents by Electronic Mail

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission’s Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission’s Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

Merge into a single electronic file the entire document to be served (e.g., title page, table of contents, text, attachments, service list).

Attach the document file to an electronic note.

In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.

Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats.)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of e-mail addresses:

- Choose "Proceedings" then "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding.
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

(END OF APPENDIX B)

CERTIFICATE OF SERVICE

I certify by electronic mail to those who provided electronic mail addresses, and by U.S. mail to those who did not provide e-mail addresses, this day served a true copy of the original attached Administrative Law Judge's Ruling Soliciting Post-Workshop Comments on Procurement Incentive Framework on all parties of record in this proceeding or their attorneys of record.

Dated April 4, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.